



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Mr. John C. West, Jr.
Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1324

Dear Mr. West:

On July 6, 1995, we received your request for an open records decision under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34559. You assert that certain annotated newspaper clippings collected by the department's Criminal Intelligence Division are excepted from required public disclosure under section 552.108.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *But see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

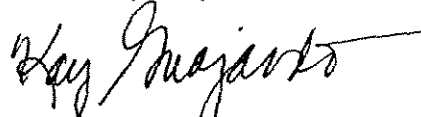
We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On July 10, 1995, we asked you for copies of the newspaper clippings, or representative samples thereof, with the caveat that your failure to do so would result in the waiver of the act's discretionary exceptions. To date we have not received your reply. Although you submitted a list of the requested clippings, that list is not the requested information.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate your claims under section 552.108. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the requested information is presumed to be public.¹ See Open Records Decision No. 195 (1977).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/rho

Ref.: ID# 34559

Enclosures: Submitted documents

cc: Mr. Mark R. Smith
Texas-at-Large Reporter
Houston Chronicle
P.O. Box 92036
Austin, Texas 78709-2306
(w/o enclosures)

¹ It is not clear to this office whether the requestor was in fact also asking for the annotations to the clippings about which you express concern in your brief. If such was the case, the presumption of openness attaches to those annotations. On the other hand, if the request was not meant to include the annotations, they do not fall within the ambit of the request and therefore will not be presumed to be public. However, because you have prepared a detailed list of the compiled newspaper clippings, you should ask the requestor if the release of that list would suffice in lieu of the clippings. Otherwise the department must release the requested information as set out above.